



U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
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March 25, 2025

BY ECF

The Honorable Alvin K. Hellerstein
United States District Judge
Southern District of New York
500 Pearl Streets
New York, New York 10007

Re: *United States v. Charlie Javice and Olivier Amar*, 23 Cr. 251 (AKH)

Dear Judge Hellerstein:

The Government respectfully writes in response to defendant Charlie Javice’s letter dated March 23, 2025 (ECF No. 350), concerning the application of the Supreme Court’s recent decision in *Thompson v. United States*, No. 23-1095, 604 U.S. __ (2025) to the Court’s upcoming jury charge. For the reasons set forth in this letter, *Thompson* concerns a criminal statute not charged in this case and should have little impact on the Court’s jury charge.

Thompson concerned a violation of Section 1014, which criminalizes “false statements” made in connection with certain loan agreements. *Thompson*, slip. op. at 4. The Supreme Court held that because Section 1014 is limited to “false” statements and does not use the word “misleading,” Section 1014 does not criminalize misleading statements that are otherwise true. *Id.* at 9-10.

Unlike *Thompson*, the defendants are charged with violating certain federal fraud statutes, which, unlike Section 1014, are not limited to false representations, and instead, concern schemes to defraud. Such schemes need not be limited to representations that are false or untrue—although, in this case, the defendants are alleged to have made both false and misleading representations. See, e.g., *United States v. Connolly*, 24 F.4th 821, 833–34 (2d. Cir. 2002) (“To convict an accused of a wire fraud scheme to defraud, however, the government need not prove an actual false statement so long as it proves a scheme to engage in some form of deception, such as a half-truth, *i.e.*, a representation stating the truth so far as it goes but is nonetheless misleading because of the failure to state additional or qualifying matter[.]”) (internal quotation marks and citations removed)); see also 18 U.S.C. §1343 (“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. . .”); 1344 (“Whoever knowingly executes , or attempts to execute, a scheme or artifice to defraud a financial institution. . .”); 15 U.S.C. 78(j)(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5 (prohibiting the use of “any manipulative or deceptive device” in connection with the sale of any security by “employing a device, scheme or

artifice to defraud,” or any other “act, practice, or course of business” that “operates . . . as a fraud or deceit.”).

To the extent that *Thompson* has any applicability to this case, it is that the words “false” and “misleading” are not interchangeable because a “misleading statement can be true.” *Thompson*, slip op. at 4. Accordingly, the Government would propose the following modifications to the jury instructions it proposed to the Court on January 13, 2025. (ECF No. 198).

No. 6: A statement or representation is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A statement may also be ~~false~~ **fraudulent** if it contains half-truths, conceals material facts, or is ambiguous or incomplete in a manner that makes what is said, or represented, misleading or deceptive.

No. 13: A “scheme or artifice” is simply a plan for the accomplishment of an object. Fraud is a general term. It includes all the possible means by which a person seeks to gain some unfair advantage over another person by false **or misleading** representations, ~~false~~ suggestions, ~~false~~ **or** pretenses, or concealment of the truth. Thus, a scheme to defraud is merely a plan to deprive another of money or property by trick, deceit, deception or swindle.

A representation is false if it was untrue when made and was known to be untrue by the person making the representation or causing it to be made at the time it was made. A fact is material if the fact is one that a reasonable person would expect to be of concern to a reasonable and prudent person making a decision based on the representation. Deceitful statements of half truths or the concealment of material facts may also constitute ~~false~~ **misleading** representations under the statute.

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Respectfully submitted,

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